



SO ORDERED.

SIGNED this 10 day of March, 2005.

A handwritten signature in black ink, appearing to read "R. E. Nugent", is written over a horizontal line.

**ROBERT E. NUGENT
UNITED STATES CHIEF BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

BRADLEY A. WODKE,

Debtor.

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**Case No. 03-16776
Chapter 11**

MEMORANDUM OPINION

This matter came before the Court for trial on the stay relief motion of Deere & Company¹ ("Deere") and confirmation of Deere's treatment as provided for in debtor's chapter 11 plan,² to which only Deere objects. In an order entered on January 21, 2005, this Court confirmed debtor's August 13, 2004 Plan ("Plan").³ In the confirmation order, entered by agreement of all interested parties, this Court

¹ Dkt. 11.

² Dkt. 118.

³ Dkt. 168

stated, inter alia, that “upon confirmation . . . , payments to Deere and Company will be suspended until the Court determines (a) whether Deere and Company holds a perfected security interest in the collateral and if so (b) the valuation of Deere’s collateral and the amount and duration of payments the debtor will be required to make in the future in order to retain the collateral.” Under the confirmation order, if the Court today finds Deere’s interest unperfected, Deere will be treated as an unsecured creditor.

Deere, which claims a security interest in a Deere compact utility tractor and tiller, objects to its treatment under the plan. The issues presented at trial were the value of the collateral and whether Deere is properly perfected. All exhibits were admitted into evidence by stipulation of the parties.

Jurisdiction

These contested matters are core proceedings of which this Court has jurisdiction.⁴

Factual Background

Debtor Brad Wodke lives and operates a sole proprietorship machine shop in Hillsboro, Kansas. In June of 2001, he purchased a John Deere 4300 compact utility tractor and a John Deere 550 tiller from Suburban Equipment, Inc. in Wichita, a John Deere dealer. Wodke signed a fixed rate Retail Installment Contract which contained a security agreement concerning the implements in question. Wodke agreed to pay some \$19,370.17 over 60 months at 5.9 per cent per annum, and his obligation was secured by a purchase money security interest in the equipment. On June 15, 2001, Deere filed a financing statement in the office of the Register of Deeds of Marion County, Kansas.

Wodke filed this Chapter 11 bankruptcy case on December 16, 2003. In his plan, Wodke

⁴ 28 U.S.C. § 157(b)(2)(G) and (L).

proposes to cram down Deere's lien, if it is perfected, to some \$5,900, the same to be paid at 7 per cent per annum over 84 months.⁵ Wodke asserts that Deere's security interest is unperfected. This equipment is also subject to a lien of Central National Bank which holds a valid and perfected security interest in all of Wodke's equipment. Deere objects to its plan treatment and seeks stay relief.

The parties' evidentiary presentation focused on two points, the value of the implements and whether the transaction was a consumer or commercial transaction. The parties apparently believe that resolution of the latter dispute would determine whether Deere's security interest was properly perfected by the local filing. However, as set out below, the value of the tractor and tiller is less important than the legal effect of Deere's lien.

Analysis and Conclusions of Law

Whether Deere's claim is properly secured is largely a matter of law. Both parties here focused on whether this transaction was a consumer sale or a commercial sale. Debtor apparently asserts that the transaction is commercial and, because of that, Deere's local filing is insufficient to perfect its purchase money security interest. Under the old version of Article Nine as adopted in Kansas, the commercial/consumer distinction was a critical one for determining where a financing statement should be filed.⁶ Former KAN. STAT. ANN. § 84-9-109(1) (1996) defined consumer goods as those "used or

⁵ The plan valued the tractor at \$5,500 and the tiller at \$400.

⁶ Under the old version of Article Nine, in order to perfect a security interest in consumer goods the financing statement was required to be filed locally; in all other cases the financing statement was required to be filed centrally with the office of the Secretary of State. *See* KAN. STAT. ANN. § 84-9-401(1)(a) and (c) (1996). Thus, if the implements in question here are deemed to be consumer goods the financing statement should have been filed with the local Register of Deeds office. If the collateral is deemed to be equipment, the financing statement should have been filed with the Kansas Secretary of State. Former KAN. STAT. ANN. § 84-9-109(2) (1996) classified goods used or bought for use

bought for use primarily for personal, family, or household purposes.” Revised Article Nine retains this essential definition.⁷

Deere asserts that because its sale documentation contains an express declaration on the part of the debtor that this is a consumer transaction, a declaration that is made in several places, Deere was entitled to rely on the declaration in filing its financing statement locally in Marion County rather than centrally with the Secretary of State’s Office. Wodke asserts that because the tractor was delivered to him at his place of business for use there, the purchase was strictly for commercial purposes and the financing statements should have been filed centrally. Neither party recognized that the 2001 revision of Article Nine renders needless the consideration of the commercial or consumer nature of the transaction.

Former Article Nine provided that security interests in consumer goods were perfected by filing a financing statement locally. Former KAN. STAT. ANN. § 84-9-401(1)(a) (1996) provided that such filings were to be made in the office of the register of deeds of the county where the debtor resided, or, if the debtor did not reside in Kansas, where the goods were kept. Under the old law, Deere’s effort to perfect its security interest would arguably have been effective had the Court determined the transaction to be one involving consumer goods. Revised Article Nine eliminated the local filing exception for consumer goods entirely. KAN. STAT. ANN. § 84-9-501(a)(2) (2003 Supp.) now provides that in all cases, except those involving as-extracted collateral, timber to be cut, or fixtures, financing statements are to be filed in the office of the Secretary of State. Had Wodke’s transaction occurred after July 1, 2001, the effective date of Revised Article Nine, there would be no question that Deere’s local filing was

primarily in business as “equipment.”

⁷ KAN. STAT. ANN. § 84-9-102(23) (2003 Supp.)

insufficient to perfect its security interest.⁸

Because this transaction occurred on June 2, 2001, prior to the effective date of the revision, the Court must resort to the transition rules of Part 7 of Revised Article Nine to determine the proper location for filing Deere's financing statement.⁹ KAN. STAT. ANN. § 84-9-703(b) (2003 Supp.) provides that where a security interest is enforceable and would have priority over a lien creditor's rights under the old law, but would not be enforceable as against a lien creditor under the revised law, the security interest is perfected for *one year* after July 1, 2001 *and* "remains perfected thereafter only if the applicable requirement for perfection under this act are satisfied before the year expires." As far as the Court can determine from the record before it, Deere's headquarters (who according to Miller is responsible for preparing and maintaining financing statement filings) has taken no action to file its financing statement centrally with the Secretary of State as now required by KAN. STAT. ANN. § 84-9-501(a)(2) (2003 Supp.) and, accordingly, Deere's perfection lapsed as of June 30, 2002. To the extent that Central National Bank had a perfected security interest in all of Wodke's assets, this security interest attached to the tractor and tiller and is now the paramount lien.

Having concluded that Deere's security interest is unperfected, the Court need not determine the value of the tractor and tiller. Although Central National Bank claims a second (now first) lien in the equipment, the amount it is to receive under the Plan is fixed in the confirmation order and will not be affected by a change in the value of its collateral package.

⁸ See Revisor's Note, KAN. STAT. ANN. § 84-9-701 (2003 Supp.)

⁹ KAN. STAT. ANN. § 84-9-702(a) (2003 Supp.) (Revised Article Nine made applicable to transactions or liens created before the effective date of the act.)

Based on the forgoing, Deere's motion for stay relief is DENIED because it lacks a perfected security interest in the assets in question. Under the Order of Confirmation entered herein on January 21, 2005,¹⁰ Deere's claim will be treated as unsecured if the Court determines, as it has today, that Deere's security interest is unperfected. Accordingly, Deere shall receive payments in the unsecured creditor class distribution only.

IT IS SO ORDERED.

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¹⁰ Dkt. 168.